

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

CLINTON THOMPSON,)	
)	
Plaintiff,)	
)	
v.)	CV623-001
)	
MARTIN O'MALLEY, Commissioner of)	
Social Security,)	
)	
Defendant.)	

ORDER

After a careful de novo review of the record in this case, the Court concurs with the Magistrate Judge's Report and Recommendation (R&R) of February 15, 2024, (doc. no. 14), to which Plaintiff has objected, (doc. no. 15). After thorough consideration of the grounds of error alleged in Plaintiff's briefing, ranging from the ALJ's failure to resolve an apparent conflict between the vocational expert's (VE) testimony and the Dictionary of Occupational Title (DOT), the ALJ's improper weighing of the opinions of a treating psychologist, and the ALJ's failure to include a sit/stand option or account for medication side effects in his RFC assessment, the Magistrate Judge recommended the ALJ's final decision be affirmed because it was based on substantial evidence. (See generally doc. no. 14.) Plaintiff objected to the R&R, restating many arguments from his original briefing that the Magistrate Judge already addressed in the R&R, (see, e.g., doc. no. 15 at 3-9). Accordingly, only one argument merits further analysis.

The R&R acknowledges that the ALJ failed to resolve an apparent conflict between the VE's testimony and the DOT, a point which the Commissioner concedes. (Doc. no. 14 at 8-10.) However, the Magistrate Judge, after an analysis of the Eleventh Circuit's

decision in Viverette v. Commissioner of Social Security, 13 F.4th 1309 (11th Cir. 2021), followed other district courts in this Circuit and conducted a harmless error analysis. (Doc. no. 14 at 9-13.) Thompson objects, citing to non-binding authority to persuade the Court to reject the Magistrate Judge's determination that a harmless error review is appropriate. (Doc. no. 15 at 2.)

After a careful review, the Court finds the Magistrate Judge's analysis of Viverette, and other district court cases applying Viverette, compelling. The harmless error analysis is appropriate. In conducting the harmless error analysis, the Magistrate Judge, citing in part to binding Eleventh Circuit case law, found that, even without considering the tainted job, the ALJ's determination that Thompson is capable of making a successful adjustment to other work that exists in significant numbers in the national economy remains supported by substantial evidence. (Id. at 13-14.) This is not, as Plaintiff argues, a *post hoc* finding; instead, it is a review of the ALJ's decision, and a determination that, even after subtracting out the error-tainted jobs, 300,000 jobs in the national economy remain, which is substantial evidence to support the ALJ's conclusion. (Id.)

As the R&R correctly explained, (doc. no. 14 at 1-2), this Court's review of the Commissioner's final decision is limited. "We may not decide the facts anew, reweigh the evidence, or substitute our judgment for that of the Commissioner. [Cit.] If the Commissioner's decision is supported by substantial evidence, this Court must affirm, even if the proof preponderates against it." Mitchell v. Comm'r, Soc. Sec. Admin., 771 F.3d 780, 782 (11th Cir. 2014) (internal citations and quotations omitted). A de novo review of the Magistrate Judge's R&R shows he appropriately applied this deferential standard to the Commissioner's final decision. Therefore, the Plaintiff's objections are **OVERRULED**, the R&R (doc. no. 14) is **ADOPTED** as the Court's opinion in this case,

and the Commissioner's final decision is **AFFIRMED**. The Clerk of Court is **DIRECTED** to **CLOSE** this case.

ORDER ENTERED at Augusta, Georgia, this 7th day of March, 2024.



**J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA**